

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

Calling Party Pays Service Option)
in the Commercial Mobile Radio Services)
)
_____)

WT Docket No. 97-207

**REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these reply comments in the above-captioned inquiry regarding Calling Party Pays ("CPP") billing capabilities of CMRS providers.^{1/} The comments filed in this proceeding demonstrate the wisdom of relying on the competitive market, not regulation, to determine CPP availability. Consistent with this competition-based model, there is no reason for the Commission to impose new regulations or obligations on incumbent local exchange carriers ("LECs").

In particular, the Commission should not require incumbent LECs to bill and collect for CMRS providers' CPP service. Nor should the Commission adopt rules requiring LECs to

^{1/} See WT Docket No. 97-207, Notice of Inquiry, FCC 97-341 (rel. Oct. 23, 1997) (the "NOI"). All references herein to parties' "Comments" are to comments filed on or about December 16, 1997, in WT Docket No. 97-207.

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bear the financial risks of CMRS providers offering CPP in the marketplace. As stated in USTA's initial comments, the Commission should affirm that CMRS providers have the right to collect (or to contract with others to collect) charges from callers for completed calls to CMRS phones, assuming that proper notification of, and affirmative consent by, callers take place. Moreover, the many technical issues raised by CPP should not be the subject of regulation.

II. COMPETITION, NOT REGULATION, SHOULD DETERMINE CPP AVAILABILITY

The comments on the NOI strongly indicate that the Commission should rely on market forces, rather than regulation, to guide the development of CPP. Some commenters wrongly urge the Commission to adopt mandatory regulations that would burden LECs so that CMRS providers nationwide could offer CPP as an option to their customers ("mandatory CPP").^{2/} The Commission should decline this invitation. The competitive market, not regulation, should determine where, when, and how CPP develops in the United States.

There is no indication in the record that mandatory CPP availability can or will enhance competition for CMRS or local exchange service.^{3/} Experiences with CPP in the United States to date demonstrate that actual marketplace acceptance of CPP has been erratic, due in large part to technical and operational problems.^{4/} As USTA and others have stated, technical and

^{2/} See, e.g., Comments of Omnipoint Communications, Inc. ("Omnipoint") at 2, 26-27.

^{3/} See Comments of GTE Service Corporation ("GTE") at 10.

^{4/} See, e.g., Comments of SBC Communications, Inc. ("SBC") at 10-11 (describing significant practical and technical difficulties with CPP in Chicago); Sprint Corporation ("Sprint") at 5-6 (describing difficulties with CPP offering in Charlottesville); GTE at 8-9 (describing experience in Hawaii); U S West, Inc. ("U S West") at 4-6; Bell Atlantic at 3-6.

billing format issues should be addressed by private bodies, rather than the Commission.^{5/} Conversely, CTIA has reported that business subscribers favor the traditional U.S. wireless model, in which the party receiving the call pays for it, to encourage customers to call them.^{6/} In light of this diverse domestic experience, CPP should not be viewed as a regulatory device for guiding the competitive development of CMRS or any other telecommunications services.

Although several commenters discuss international experiences with CPP,^{7/} USTA believes that the applicability of such experiences to the U.S. telecommunications market is limited.^{8/} There are so many differences in the economic, technical, and regulatory environments among nations that analogies between the United States and other countries should not form the basis for U.S. policy regarding CPP. Rather, the Commission should continue relying on the competitive marketplace for the development of CPP. Negotiations between CMRS providers and other parties, including incumbent LECs, should be the basis for such development.

Indeed, USTA continues to be concerned about the negative effects of mandatory CPP on universal service.^{9/} As comments by some rural LECs show, mandatory CPP could increase wireline subscribers' total charges for local service, causing customer confusion and

^{5/} See, e.g., Comments of USTA at 6-7; U S West at 6-9.

^{6/} See Comments of BellSouth at 4, *citing* CTIA White Paper at 8.

^{7/} See, e.g., Comments of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint Spectrum") at 2-4, 7-8; AirTouch Communications, Inc. ("AirTouch") at 10, 12-13; BellSouth at 6-7.

^{8/} See Comments of USTA n. 8.

^{9/} See *id.* at 4.

inconvenience.^{10/} Precisely such damaging confusion would result if the Commission adopted proposals such as Omnipoint's to require LECs to include CMRS charges for CPP in the main portion of the LECs' bills to their customers.^{11/} Such proposals should be rejected as nothing more than thinly-veiled attempts to mask the true nature of CMRS providers' charges for CPP. Moreover, commenters recognize that the overall costs of implementing mandatory CPP will be very high:

[T]he potential costs imposed on U.S. telecommunications carriers to establish a ubiquitous, functional CPP-calling system on a local, regional or nationwide basis are enormous.^{12/}

The universal service goals of the Communications Act are not advanced by regulations, such as the imposition of mandatory CPP, that could result in higher costs to end users, to the sole benefit of CMRS providers.^{13/}

Some CMRS providers claim that although such billing options as First-Minute-Free ("FMF") calling for incoming calls are "helpful," they "cannot substitute" for CPP, since they do not send the correct pricing signals to wireline end users that wish to call CMRS users.^{14/} USTA believes that mandatory CPP, administered pursuant to regulation, would be even less

^{10/} See Comments of Bay Springs Telephone Company, Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc. ("Rural Telephone Companies") at 2, 7.

^{11/} See Comments of Omnipoint at 10-12.

^{12/} Comments of Paging Network, Inc. ("PageNet") at 10; *see also* Comments of Centennial Cellular Corp. at 18.

^{13/} One commenter calls for comprehensive local pricing reform as a way to achieve greater local competition and minimize distinctions between wireline and wireless telephony. *See* Comments of AirTouch at 12-16. However, that topic is far outside the scope of the NOI.

^{14/} Comments of Airtouch at 12. *See also* Comments of Omnipoint at 18-19; Personal Communications Industry Association at 11.

likely to send the proper pricing signals to users. Indeed, the best way to ensure that users receive proper market signals is to let the competitive markets operate without regulation. In doing so, CMRS providers will be free to offer FMF, CPP, and other billing and service arrangements as competitive conditions warrant.

In this regard, there is ample evidence in the record that FMF, sometimes offered to CMRS customers in conjunction with caller ID, can improve the "balance" between incoming and outgoing traffic for wireless services.^{15/} Of course, at least one CMRS provider correctly notes that achieving such a balance "is not, in and of itself, a meaningful objective for regulators or for the wireless industry."^{16/}

In short, the comments provide no reason for the Commission to alter its current policy of relying on the marketplace, not regulation, for the development of CPP.

III. THE COMMISSION SHOULD NOT REQUIRE LECS TO BILL AND COLLECT FOR CMRS PROVIDERS' CPP SERVICE

Several CMRS providers wrongly call for the Commission to require LECs to provide billing and collection services to support CMRS providers' CPP service.^{17/} There is absolutely no reason for the Commission to consider such a requirement. After wisely deregulating

^{15/} See Comments of United States Cellular Corporation at 4-5 (stating that where it offers a combination of FMF and caller ID, its ratio of inbound to outbound minutes has shifted from 2:5 to 4:5); Sprint Spectrum at 4 (stating that FMF, caller ID, and integrated voicemail, in addition to other features, have contributed to a balance of traffic on some systems "approaching 60/40 or better.")

^{16/} Comments of PageNet at 5.

^{17/} See, e.g., Comments of AirTouch at 19-21; Vanguard Cellular Systems, Inc. ("Vanguard") at 2-6; Omnipoint at 7-17. Cf. Comments of Sprint Spectrum at 9-11.

billing and collection services in 1986,^{18/} the Commission should not revisit this successful policy in order to specially benefit CMRS service providers among all other participants in the telecommunications marketplace.^{19/}

For the Commission to single out LECs' billing and collection services associated with CPP for re-regulation would unreasonably discriminate in favor of CMRS providers. It also would severely distort the competitive market for billing and collection that the Commission found to exist over 11 years ago. The Commission specifically has declined to require incumbent LECs to offer billing and collection services to interexchange carriers ("IXCs") and operator service providers ("OSPs"),^{20/} and has ruled that incumbent LECs may decline to offer billing and collection services to information service providers ("ISPs"), finding that firms such as credit card companies were providing billing for these services.^{21/} Indeed, AT&T states that:

There may ... be other techniques to implement CPP or equivalent billing arrangements that do not require a direct relationship between LECs and CMRS providers. Any actions that the Commission takes in response to the Notice

^{18/} See *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, 102 FCC 2d 1150 (1986), *recon. denied*, 1 FCC Rcd 445 (1986).

^{19/} As recently as November 26, 1997, the Commission reaffirmed that billing and collection services are not subject to common carrier regulation. See Comments of AirTouch at n. 37, *citing Access Charge Reform*, CC Docket No. 96-262, Third Report and Order, FCC 97-401 (rel. Nov. 26, 1997) at 1, n. 2.

^{20/} See *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 6 FCC Rcd 3506, 3509 (1991).

^{21/} See *Audio Communications, Inc. Petition For A Declaratory Ruling That The 900 Service Guidelines Of US Sprint Communications Co. Violate Sections 201(a) and 202(a) Of The Communications Act*, 8 FCC Rcd 8697, 8699-8700 (1993).

should not foreclose these alternative arrangements or imply that there is only one way in which CPP can be implemented.^{22/}

The billing services that incumbent LECs and others offer to CMRS providers for airtime charges are the same as those offered to IXC, OSPs, and ISPs, as well as to competitive local exchange carriers.^{23/} These services should continue to receive deregulated treatment from the Commission. Some parties incorrectly attempt to analogize the billing and collection for CPP with services such as access to calling card validation information and LIDB services that are subject to the Commission's Title II common carrier jurisdiction.^{24/} Those analogies are wrong, since such services are functionally as well as legally different from billing and collection. Indeed, in deciding that such services are subject to Title II, the Commission did not find them to be similar to billing and collection.^{25/}

Commenters also engage in irrelevancy by noting that the Commission has stated that billing and collection services should be among those that BOCs must offer on a nondiscriminatory basis to other carriers pursuant to section 271(c)(1) of the Communications

^{22/} Comments of AT&T Wireless Services, Inc. at 2-3.

^{23/} See Comments of Bell Atlantic at 8-9.

^{24/} See Comments of Omnipoint at 14, citing *Cincinnati Bell Telephone Co.*, 6 FCC Rcd 3501, 3504 (1991) ("*Cincinnati Bell*"), and *Southwestern Bell Telephone Company*, 6 FCC Rcd 6095 (1991) ("*Southwestern Bell*").

^{25/} See *Cincinnati Bell*, 6 FCC Rcd at 3503-3504, 3505 (analogizing access to calling card validation information to generation of telephone line-based account numbers previously found subject to Title II); *Southwestern Bell*, 6 FCC Rcd at 6097-6098 (distinguishing LIDB service from billing and collection).

Act.^{26/} Putting aside section 271's questionable constitutional status,^{27/} the requirements and goals of section 271(c)(1), which govern dealings between a BOC and its affiliate required by section 271(a), are unrelated to the mandatory offering by incumbent LECs of billing and collection services for CPP.

In this regard, the Commission should reject out of hand Omnipoint's call for the Commission to:

establish the offering of such billing and collection services on a nondiscriminatory basis as a precondition to any LEC's [sic] entry into the market for InterLATA services, as well as a prerequisite to a LEC's provision of their own (or their affiliates') CPP service, either to end user customers or on a wholesale basis to carriers.^{28/}

Aside from the fact that only BOCs are subject to the interLATA restrictions of section 271 of the Communications Act, the only reason for such a restriction, assuming *arguendo* that the Commission had the authority to impose it, would be to benefit Omnipoint while burdening LECs. There is no public interest basis for such a requirement.

In short, the Commission has consistently declined to require LECs to provide now-unregulated billing and collection to any particular segment of the telecommunications industry. The Commission should continue this practice with respect to CMRS providers and reject requests by some such providers for special treatment.

^{26/} See, e.g., Comments of Omnipoint at 15 and Vanguard at 3, citing *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd 21905, 22007-22008 (1996).

^{27/} See *SBC Communications, Inc. et al v. FCC*, Civil Action No. 7:97-CV-163-X, slip op. (N.D. Tex. Dec. 31, 1997) (finding sections 271-275 of the Communications Act unconstitutional).

^{28/} See Comments of Omnipoint at 15 (footnote omitted).

IV. THE RISKS OF OFFERING CPP SHOULD NOT BE SHIFTED TO LECS THROUGH REGULATION

USTA urges rejection of some commenters' proposals that incumbent LECs which offer billing and collection to CMRS providers for CPP should be required to bear certain risks and responsibilities associated with CPP, including the problem of "leakage," or uncollectible charges.^{29/}

There is no reason for the Commission to require incumbent LECs to enforce collection of CPP-related charges on behalf of CMRS providers. LECs should not be required to incur liability for uncollectibles, and they should not be required to disconnect local wireline service for nonpayment of CPP related charges.^{30/} Such requirements would unfairly discriminate in favor of CMRS providers while burdening incumbent LECs for no good reason. The Commission should reject such transparent attempts by CMRS providers to gain competitive advantage. Such issues should be the subject of negotiations between CMRS providers and incumbent LECs. The only limited action that the Commission should take in this area is to affirm that CMRS providers have the right to collect, or to contract with others to collect, charges from callers for completed calls to CMRS phones, assuming that proper notification of and affirmative consent by callers take place.

^{29/} See, e.g., Comments of Omnipoint at 10-12; Celpage, Inc. at 8 (proposing national regulations requiring "originating carriers" to warn calling parties about the costs of CPP calls and to shift to such carriers responsibility for any complaints arising from CPP rates or practices).

^{30/} See Comments of Rural Telephone Companies at 8-9.

V. CONCLUSION

USTA respectfully requests that the Commission refrain from requiring incumbent LECs to bill and collect for CMRS providers' CPP service. USTA further requests that the Commission otherwise act as proposed in USTA's comments and reply comments.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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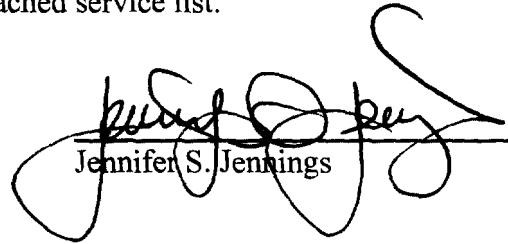
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I, Jennifer Jennings, do certify that copies of the foregoing Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


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